



Claimant argues the ALJ's Post Award Medical Order should be affirmed.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

At the post award hearing, claimant requested appointment of a specialist to provide treatment for her upper extremities. Claimant had sought treatment on her own after she had been released from treatment by the authorized physician. Dr. James Gluck performed surgery on claimant's right upper extremity at the elbow and wrist in 2005. The surgery only provided temporary relief.

When claimant requested additional treatment respondent sent her to Dr. Paul Stein. Claimant stated that Dr. Stein indicated that she was being seen for an evaluation and not treatment. And claimant testified that at this point her relationship with Dr. Stein is not very good.

Claimant testified she is having numbness and tingling in her fingers again as well as pain in her thumb and index finger. She further testified that she overcompensates for her right hand and now her left is getting worse. No additional evidence was presented.

The ALJ's Post Award Medical Order provided in pertinent part:

Dr. J. Mark Melhorn is authorized to examine the Claimant to determine if additional treatment is reasonable and necessary.

Initially, it must be determined whether the Board has jurisdiction to review the ALJ's Order. The sentence in the ALJ's January 15, 2008 Order which authorizes Dr. J. Mark Melhorn to examine claimant and determine if additional medical treatment is reasonable and necessary simply designates a physician to conduct an independent medical examination (IME). Under K.S.A. 44-516 the ALJ is entitled to appoint an independent physician to evaluate the claimant for various reasons. In this case, the ALJ ordered an independent medical examination for an opinion whether additional medical treatment is reasonable and necessary.

The ALJ's decision to have an independent medical examination performed on the claimant is interlocutory in nature and made during the litigation of a worker's compensation case pending before the ALJ. This is not a final order that can be reviewed pursuant to K.S.A. 44-551. Neither is this an order entered pursuant to the preliminary hearing statute K.S.A. 44-534a, as preliminary hearing orders are limited to issues of furnishing medical treatment and payment of temporary total disability compensation. The

Order pertains to an interlocutory matter, ordering an independent medical examination, over which an ALJ has authority to order during the litigation of the case.

Because the Act specifically grants an ALJ the authority to appoint neutral health care providers to evaluate injured workers<sup>1</sup>, the ALJ did not exceed his jurisdiction and authority by ordering the evaluation.

The Board's jurisdiction to review appeals is governed by K.S.A. 44-534a and K.S.A. 44-551. Those statutes grant the Board the jurisdiction to review: (1) certain preliminary hearing findings; and, (2) final orders and awards. Neither statute grants the Board the authority to review the interlocutory order now in issue.

In this case, the ALJ ordered an independent medical examination to determine if additional treatment is reasonable and necessary. In essence, the post award proceeding is ongoing. The Board is without jurisdiction to review the ALJ's interlocutory order. Accordingly, this appeal is premature as the ALJ has not decided the issue respondent is appealing.

**WHEREFORE**, it is the decision of the Board that the respondent's appeal is dismissed and the Post Award Medical Order of Administrative Law Judge John D. Clark dated January 15, 2008, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of March 2008.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

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<sup>1</sup> See K.S.A. 44-510e and K.S.A. 44-516.

c:     Stephen J. Jones, Attorney for Claimant  
        Christopher J. McCurdy, Attorney for Respondent and its Insurance Carrier  
        John D. Clark, Administrative Law Judge